

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1040

Introduced by Assembly Member Leno

February 20, 2003

An act to amend Sections ~~7280, 30111, and 30462~~ of ~~30111 and 30462~~ of, and to add Chapter 3.55 (commencing with Section 7289) to Part 1.7 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1040, as amended, Leno. ~~Occupancy taxes: cigarette~~ Cigarette taxes.

Existing law authorizes ~~cities and counties~~ local governmental entities to levy specified ~~transient occupancy~~ taxes, but prohibits the imposition of local taxes by any city, charter city, town, county, charter county, city and county, charter cities and counties, or other political subdivision or agency of this state, on the sale, use, ownership, holding, or other distribution of cigarettes and tobacco products, except as provided.

~~This bill would make technical, nonsubstantive changes to those provisions:~~

~~The Cigarette and Tobacco Products Tax Law imposes a tax on every distributor of cigarettes and tobacco products at specified rates, and requires all moneys from that tax that are deposited in the Cigarette Tax Fund be allocated for specified purposes:~~

~~This bill would make technical, nonsubstantive changes to those provisions:~~

This bill would, subject to specified requirements, authorize the board of supervisors of a county to impose a tax, in addition to other local taxes, on the privilege of selling cigarette and tobacco products at retail within its boundaries, whether or not within an incorporated city. Among other things, the tax would be subject to approval by a majority vote of the board of supervisors and by a $\frac{2}{3}$ vote of the qualified voters of the county and would be imposed at an unspecified rate in increments of $\frac{1}{8}\%$. The ordinance levying the tax would, among other things, require the county to contract with the State Board of Equalization with respect to the administration of the tax, as provided.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. Section 7280 of the Revenue and Taxation Code~~
SECTION 1. Chapter 3.55 (commencing with Section 7289)
is added to Part 1.7 of Division 2 of the Revenue and Taxation
Code, to read:

CHAPTER 3.55. COUNTY TOBACCO TAX AUTHORITY

7289. (a) Subject to the requirements of subdivision (b), the board of supervisors of a county may impose a tax, in addition to any other tax authorized by this division, on the privilege of selling cigarettes and tobacco products at retail within its jurisdiction, whether or not within an incorporated city.

(b) The imposition of any tax under this section shall meet all of the following requirements:

(1) An ordinance proposing the tax shall be approved by a majority vote of all of the members of the county board of supervisors and by a two-thirds majority vote of the qualified voters of the county voting in an election on the issue.

(2) The ordinance proposing the tax shall state the rate of the tax and the length of time for which the tax is to be imposed.

(3) The tax shall be imposed at a rate of at least ____ percent, but not to exceed ____ percent, at increments of $\frac{1}{8}$ percent.

(c) For purposes of this chapter, "cigarettes and tobacco products" have the same meaning as provided in Sections 30003 and 30121.

(d) (1) *The imposition of a tax pursuant to this section does not prohibit the concurrent application of a tax imposed pursuant to the Sales and Use Tax Law (Part 1 (commencing with Section 6001)), or the Bradley-Burns Uniform Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or of a tax imposed in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), to the sale, storage, use, or other consumption of cigarettes or tobacco products.*

(2) *Notwithstanding Section 7203.5 or any other provision of law, the imposition of a tax pursuant to this chapter by a county does not prohibit the concurrent administration by the board of a sales or use tax ordinance adopted by that county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)).*

7289.1. *Any ordinance levying a tax pursuant to this chapter shall provide that the tax shall, to the extent not inconsistent with this chapter, conform to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).*

7289.2. *No ordinance adopted pursuant to this chapter shall become operative other than on the first day of a calendar quarter that commences more than 110 days after the adoption of the ordinance.*

7289.3. *Every retailer engaged in business in a county that has an operative ordinance enacted pursuant to this chapter shall, at the time of making the sales of cigarettes or tobacco products, collect the tax from the consumer and give to the consumer a receipt therefor in the manner and form prescribed by the board.*

7289.4. (a) *Prior to the operative date of any ordinance imposing a tax pursuant to this chapter, the county shall contract with the board to perform all functions incident to the administration and operation of the ordinance. If the county has not contracted with the board prior to the operative date of its ordinance, it shall nevertheless so contract and, in that case, the operative date shall be the first day of the first calendar quarter following the execution of the contract.*

(b) *The contract shall contain a provision requiring the county to reimburse the board for, and to hold the board harmless from, any and all costs, losses, or refunds of any kind whatsoever.*

(c) *The contract shall also contain a provision requiring, in the event that a legal action is commenced challenging the validity of*

1 *the tax in its entirety as opposed to its application to an individual*
2 *taxpayer, that the county place the tax proceeds into an*
3 *interest-bearing escrow account until the legality of the tax is*
4 *finally resolved by a final and nonappealable decision rendered by*
5 *a court of competent jurisdiction. This requirement shall be*
6 *enforceable by any interested person in a proceeding for a writ of*
7 *mandate.*

8 *(d) The county shall be entitled to indemnity for any and all*
9 *costs, losses, or refunds from any entity, except the state, that*
10 *participated in the imposition of the tax. For the purposes of this*
11 *part, “participated” means any involvement in procuring the*
12 *legislation that authorized the tax. Any organization that is a*
13 *member of the legislative body of the county imposing the tax has*
14 *participated in the imposition of the tax within the meaning of this*
15 *section.*

16 7289.5. *(a) Any county that adopts an ordinance to levy a tax*
17 *pursuant to this chapter shall pay to the board its costs of*
18 *preparation to administer and operate the tax imposed pursuant*
19 *to the ordinance. The county shall pay those costs monthly as*
20 *incurred and billed by the board. Those costs include all*
21 *preparatory costs, including costs of developing procedures,*
22 *programming for data processing, developing and adopting*
23 *appropriate regulations, designing and printing of forms,*
24 *developing instructions for the board’s staff and for taxpayers, and*
25 *other necessary preparatory costs that shall include the board’s*
26 *direct and indirect costs as specified by Section 11256 of the*
27 *Government Code. Any disputes as to the amount of preparatory*
28 *costs incurred shall be resolved by the Director of Finance, and his*
29 *or her decision shall be final. The maximum amount of all*
30 *preparatory costs to be paid by the county shall not, in any event,*
31 *exceed one hundred seventy-five thousand dollars (\$175,000).*

32 *(b) In addition to the amounts otherwise provided for*
33 *preparatory costs, the board shall, as provided in Section 7289.6,*
34 *charge an amount for its services in administering the tax imposed*
35 *pursuant to this chapter as determined by the board, with the*
36 *concurrence of the Department of Finance.*

37 7289.6. *All revenues collected pursuant to a tax authorized by*
38 *this chapter shall be remitted to the State Board of Equalization*
39 *and allocated by the board as follows:*

1 (a) First, for reimbursement to the board, pursuant to the
2 contract between the board and the county of the reasonable costs
3 of administering and enforcing the ordinance on behalf of the local
4 entity.

5 (b) Second, for transmission to each county that has an
6 operative ordinance enacted pursuant to this chapter, in an amount
7 corresponding to the amount of revenues derived within that
8 jurisdiction from a tax levied by that ordinance. Twenty percent of
9 all moneys transmitted to a county pursuant to this section may
10 only be expended by that local entity for purposes of local
11 preventative health education against tobacco use programs as
12 described in Section 104355 of the Health and Safety Code.

13 7289.7. All taxes imposed pursuant to this chapter collected
14 by the board pursuant to contract with the county shall be
15 transmitted by the board to the county periodically as promptly as
16 feasible, but no less frequently than twice in each calendar quarter.

17 7289.9. Except as provided in Section 7289.10, to the extent
18 feasible or practicable, Chapter 5 (commencing with Section
19 6451), Chapter 6 (commencing with Section 6701), Chapter 7
20 (commencing with Section 6901), and Chapter 8 (commencing
21 with Section 7051) of Part 1, shall govern determinations,
22 collection of tax, overpayments and refunds, and administration
23 under this chapter.

24 7289.10. The return and payment of the tax imposed by this
25 chapter is due and payable to the board on the same date as the
26 return and payment of the tax imposed pursuant to the Sales and
27 Use Tax Law (Part 1 (commencing with Section 6001)).

28 SEC. 2. Section 30111 of the Revenue and Taxation Code is
29 amended to read:

30 30111. The taxes imposed by this part are in lieu of all other
31 state, county, municipal, or district taxes on the privilege of
32 distributing cigarettes or tobacco products.

33 This section does not prohibit the application of Part 1
34 (commencing with Section 6001), Part 1.5 (commencing with
35 Section 7200), Part 1.6 (commencing with Section 7251), Chapter
36 3.55 (commencing with Section 7289) of Part 1.7, or Article 2
37 (commencing with Section 37021) of Part 17 to the sale, storage,
38 use, or other consumption of cigarettes or tobacco products.

39 SEC. 3. Section 30462 of the Revenue and Taxation Code is
40 amended to read:

1 30462. (a) All money deposited in the Cigarette Tax Fund
2 under this part is hereby appropriated, subject to the provisions of
3 any budget bill heretofore or hereafter enacted and Section 11006
4 of the Government Code, and shall, upon order of the Controller,
5 be drawn therefrom and allocated for the following purposes:

6 (1) To pay the refunds authorized by this part.

7 (2) The balance remaining in the fund shall be transferred to the
8 General Fund of this state on or before the last calendar day of each
9 month.

10 (b) It is the intent of the Legislature that Section 30111
11 continues to prohibit the imposition of local taxes by any city,
12 charter city, ~~or town, county, charter county, city and county,~~
13 ~~charter cities and counties, or other political subdivision or agency~~
14 ~~of this state,~~ on the sale, use, ownership, holding, or other
15 distribution of cigarettes and tobacco products except as provided
16 by Section 30111. ~~The Legislature finds and declares that the need~~
17 ~~for uniform statewide regulation and collection of cigarette taxes~~
18 ~~is a matter of statewide concern, and it is the Legislature's intent~~
19 ~~to regulate the subject matter of cigarette taxes comprehensively~~
20 ~~and to occupy the field to the exclusion of local action except as~~
21 ~~specifically provided by Section 30111.~~

22 is amended to read:

23 7280. (a) The legislative body of any city or county may levy
24 a tax on the privilege of occupying a room or rooms, or other living
25 space, in a hotel, inn, tourist home or house, motel, or other
26 lodging unless the occupancy is for a period of more than 30 days.
27 The tax when levied by the legislative body of a county shall apply
28 only to the unincorporated areas of the county.

29 (b) For purposes of this section, the term "the privilege of
30 occupying a room or rooms, or other living space, in a hotel, inn,
31 tourist home or house, motel, or other lodging" does not include
32 the right of an owner of a timeshare estate in a room or rooms in
33 a timeshare project, or the owner of a membership camping
34 contract in a camping site at a campground, or the guest of the
35 owner, to occupy the room, rooms, camping site, or other real
36 property in which the owner retains that interest.

37 For purposes of this subdivision:

38 (1) "Timeshare estate" means a timeshare estate, as defined by
39 Section 11003.5 of the Business and Professions Code.

1 ~~(2) “Membership camping contract” means a right or license~~
2 ~~as defined by subdivision (b) of Section 1812.300 of the Civil~~
3 ~~Code.~~

4 ~~(3) “Guest of that owner” means a person who does either of~~
5 ~~the following:~~

6 ~~(A) Occupies real property accompanied by the owner of either~~
7 ~~of the following:~~

8 ~~(i) A timeshare estate in that real property.~~

9 ~~(ii) A camping site in a campground pursuant to a right or~~
10 ~~license under a membership camping contract.~~

11 ~~(B) Exercises that owner’s right of occupancy without payment~~
12 ~~of any compensation to the owner.~~

13 ~~“Guest of that owner” specifically includes a person occupying~~
14 ~~a timeshare unit or a camping site in a campground pursuant to any~~
15 ~~form of exchange program.~~

16 ~~(c) For purposes of this section, “other lodging” includes, but~~
17 ~~is not limited to, a camping site or a space at a campground or~~
18 ~~recreational vehicle park, but does not include any of the~~
19 ~~following:~~

20 ~~(1) Any facility operated by a local government entity.~~

21 ~~(2) Any lodging excluded pursuant to subdivision (b).~~

22 ~~(3) Any campsite excluded from taxation pursuant to Section~~
23 ~~7282.~~

24 ~~(d) Subdivision (b) shall not affect or apply to the authority of~~
25 ~~any city or county to collect a transient occupancy tax from~~
26 ~~timeshare projects that were in existence as of May 1, 1985, and~~
27 ~~which timeshare projects were then subject to such a tax imposed~~
28 ~~by an ordinance duly enacted prior to May 1, 1985, pursuant to this~~
29 ~~section. The act adding this subdivision shall not in any way affect~~
30 ~~any litigation pending on or prior to December 31, 1985.~~

31 ~~SEC. 2. Section 30111 of the Revenue and Taxation Code is~~
32 ~~amended to read:~~

33 ~~30111. The taxes imposed by this part are in lieu of any other~~
34 ~~state, county, municipal, or district tax on the privilege of~~
35 ~~distributing cigarettes or tobacco products.~~

36 ~~This section does not prohibit the application of Part 1~~
37 ~~(commencing with Section 6001), Part 1.5 (commencing with~~
38 ~~Section 7200), Part 1.6 (commencing with Section 7251), or~~
39 ~~Article 2 (commencing with Section 37021) of Part 17 to the sale;~~

1 ~~storage, use or other consumption of cigarettes or tobacco~~
2 ~~products.~~

3 ~~SEC. 3. Section 30462 of the Revenue and Taxation Code is~~
4 ~~amended to read:~~

5 ~~30462. (a) All money deposited in the Cigarette Tax Fund~~
6 ~~under this part is hereby appropriated, subject to the provisions of~~
7 ~~any budget bill heretofore or hereafter enacted and Section 11006~~
8 ~~of the Government Code, and shall, upon order of the Controller,~~
9 ~~be drawn therefrom and allocated for the following purposes:~~

10 ~~(1) To pay the refunds authorized by this part.~~

11 ~~(2) The balance remaining in the fund shall be transferred to the~~
12 ~~General Fund of this state on or before the last calendar day of each~~
13 ~~month.~~

14 ~~(b) It is the intent of the Legislature that Section 30111~~
15 ~~continues to prohibit the imposition of any local tax by any city,~~
16 ~~charter city, town, county, charter county, city and county, charter~~
17 ~~cities and counties, or other political subdivision or agency of this~~
18 ~~state, on the sale, use, ownership, holding, or other distribution of~~
19 ~~cigarettes and tobacco products except as provided by Section~~
20 ~~30111. The Legislature finds and declares that the need for~~
21 ~~uniform statewide regulation and collection of cigarette taxes is a~~
22 ~~matter of statewide concern, and it is the Legislature's intent to~~
23 ~~regulate the subject matter of cigarette taxes comprehensively and~~
24 ~~to occupy the field to the exclusion of local action, except as~~
25 ~~specifically provided by Section 30111.~~